

## **3-8.000**

# **FINANCIAL MANAGEMENT**

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### **3-8.100 Operational Expenses**

The Director of the Executive Office for United States Attorneys is the official responsible and accountable for the appropriation of the Offices of the United States Attorneys. Each United States Attorney has been delegated authority to manage the funds/budget of his/her office within certain limitations. That delegation is normally administered through the Administrative Staff of the Office of the United States Attorney.

Financial expenditures should remain consistent with the delegations of each office and within the guidelines and regulations set forth by the various statutes and the Department of Justice.

### **3-8.130 Expenditures and Obligations Under the Anti-Deficiency Act**

Cross reference(s): USAM §§ 3-8.100 et seq.; 3-8.300 et seq.; 3-8.600 et seq.; 4-1.310; 4-1.410; 4-1.600; 4-9.100; 4-9.112; 5-5.230; 5-12.111; 5-12.613; 6-6.130; 6-5.321.

The Anti-Deficiency Act (Act) states that: 1) the government may not make or authorize an expenditure exceeding an appropriation; or 2) involve the government in a contract for money before an appropriation is made, unless authorized by law. 31 U.S.C. § 1341(a). This means that you may not contract or obligate the United States Attorneys' appropriation for services to be performed outside of the current fiscal year, absent explicit statutory authority.

You should be particularly mindful of this restriction if you are contemplating entering into any consent decree. Please ensure that the terms of the consent decree DO NOT obligate the government to expend funds beyond your office's litigation budget or beyond the current fiscal year. If you ever need an exception to this restriction, you must consult with and obtain prior approval from the Executive Office for United States Attorneys (EOUSA) before executing the agreement.

Such a consultation will give EOUSA the ability to review the feasibility and legality of such expense and an opportunity to consult with Department of Justice officials and Congress to obtain approval.

This restriction does not apply to your delegated authority to settle civil cases up to \$1,000,000 paid out of the Judgment Fund. See 28 C.F.R. § 0.168.

### **3-8.210 Depositions**

Depositions should be taken whenever possible, to reduce expenditures. Depositions should be taken before notarial officers or other officer authorized for administering oaths.

United States Attorneys are authorized to incur the necessary expenses of taking depositions. If a salaried federal court reporter is used, the reporter is entitled to compensation for the production of transcript only (attendance fees may not be paid). Payment of an attendance fee would be considered a violation of the prohibition against dual compensation, 5 U.S.C. Sec. 5533. The salaried federal reporter is not controlled by the court-reporting law (see 28 U.S.C. Sec. 753) as to charges for work not regulated by that statute. Payment to stenographers for services should be in accord with prevailing local rates.

Stenographic and notarial charges related to depositions for indigent persons are paid by the Department of Justice only in cases of fact witnesses.

Depositions to be taken in a foreign country must be channeled through the Department of State in the same manner as subpoenaing a witness who resides in a foreign country to appear in court. Authorization can be obtained to pay for the services of interpreters and stenographers if none are available in the embassy or consulate, upon approval of the Deputy Director, Financial Management Staff, EOUSA.

The Office of International Affairs in the Criminal Division, or the Office of Foreign Litigation in the Civil Division, should be consulted in the case of depositions to be taken in the United States at the request of a foreign court.

If foreign witnesses are to be examined on the premises of the diplomatic or consular mission, arrangements should be made in advance with the Special Authorization Unit, Justice Management Division (JMD), to provide advance authority to the consular official to reimburse these witnesses in the same manner as those appearing in federal courts.

Deposition expenses of experts who will not be government witnesses must be paid as a litigative expense of the United States Attorneys' office.

### **3-8.220 Extradition Expenses**

The Criminal Division, Office of International Affairs, will provide specific guidelines, and suggestions, as well as the necessary clearances for all extradition proceedings.

All other information relating to extradition should be obtained from EOUSA, as well as the other relevant sections of other titles of the United States Attorneys' Manual.

### **3-8.230 Foreign Counsel**

United States Attorneys have authority to incur expenses to hire foreign counsel. Contact the Financial Management Staff, EOUSA, for assistance.

### **3-8.232 Foreign Witnesses**

Consular officials will normally serve subpoenas on American citizens (including American Nationals who, while not citizens, owe permanent allegiance to the United States, as well as alien residents, who have been lawfully admitted for permanent residence in the United States, although not citizens) residing abroad, except in those countries (such as Switzerland) which prohibit foreigners from serving legal documents. In these cases, the Office of International Affairs in the Criminal Division or the Office of Foreign Litigation in the Civil Division should be consulted, as appropriate.

American citizens are entitled to compensation for travel and expenses in these cases. When the testimony of the employee of a foreign government is contemplated, it is imperative that the attorney submit a request

directly to the Office of International Affairs in the Criminal Division, or the Office of Foreign Litigation in the Civil Division, prior to communicating with the witness or the foreign government. The appropriate office will request the Department of State to obtain the approval of the foreign government involved.

Payment for subsistence, witness fees, and actual cost of travel, for both American and foreign citizens, is fixed by 28 U.S.C. Sec. 1821.

### **3-8.240 Payment of Travel Expenses of Defendant and Counsel to Attend Depositions Taken at the Instance of the Government**

18 U.S.C. Sec. 3503(c) specifies that whenever a deposition is taken at the instance of the government, the court may direct that the expenses of travel and subsistence for the defendant and his/her attorney for attendance at the deposition be paid by the government. In those instances where the United States Attorney's Office is the prosecuting office and is directed by the court to pay such costs, the expenses will be considered to be litigative expenses chargeable against the United States Attorneys' appropriation. Defendant and his/her counsel will be reimbursed for "reasonable expenses", i.e., only those expenses for which a government employee traveling under government travel regulation would be reimbursed.

### **3-8.250 Interpreters**

The Court Interpreters Act of 1978 requires the Director, Administrative Office of the U.S. Courts to "establish a program to facilitate the use of interpreters in courts of the United States." The Administrative Office of the U.S. Courts will prescribe standards for interpreter qualifications and will certify the qualifications of individuals who may serve as interpreters in bilingual proceedings and in proceedings involving persons whose hearing is impaired.

All costs for interpreter services necessary to enable a party to comprehend the proceedings in the courtroom or in chambers, to communicate with counsel in the immediate environs of the courtroom in connection with ongoing judicial proceedings and to communicate with the presiding judicial officer are payable from funds appropriated to the judiciary. Interpreter services required by a criminal defendant to whom the government furnishes representation under the Criminal Justice Act are payable from funds appropriated to support that Act.

The United States Attorney is generally chargeable only for interpreter services necessary to interpret the testimony of prospective government witnesses in the investigative stage. When the case goes to trial, those trial related interpretive expenses, can be requested from the Special Authorization Unit (FEW appropriation). Although testimony situations are the most common occasion for the use of interpreters, interpreters may also be engaged for services necessary to determine the course of litigation. They may be paid for, or provided transportation, facilities, equipment or materials as necessary and appropriate to satisfy the United States Attorney's requirements.

Interpreters are required to execute a written oath as prescribed by Administrative Office of the U.S. Courts. The rate of compensation should be fixed by agreement with the interpreter before the interpreter renders the service required by the United States Attorney. Rates of compensation should correspond to rates paid by the court. The Administrative Office of the U.S. Courts regulation (Sec. 1.72) currently permits the presiding judicial officer to fix reasonable compensation according to the prevailing rates at the location where the designated interpreter regularly works.

It is the responsibility of investigative agencies to pay the costs to translate and transcribe recordings of foreign language telephone conversations obtained under authority of Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. Secs. 2510 to 2520.

### **3-8.280 Payment of Expert Witnesses Appointed by the Court Under Federal Rules of Evidence**

Federal judges are allowed to appoint expert witnesses to assist the court in the performance of its duty on a particular case or proceeding under Fed. R. Evid. 706. The court may either appoint an expert of its own choosing or one agreed upon by both parties. The expert's deposition may be taken by any party and he/she may be called to testify by the court or any party.

**A. Criminal Proceedings and Civil Condemnation Proceedings.** The compensation of expert witnesses appointed by the Court under Fed.R.Evid. 706 is treated as a litigative expense chargeable to the litigating agency of the government. 58 COMP.GEN. Sec. 259 (1979). In those instances where the Department of Justice is the litigating agency, the expenses of the court-appointed expert witness are payable from the appropriation "Fees and Expenses of Witnesses."

**B. Civil Proceedings.** Fed.R.Evid. 706 provides that in other civil actions, the compensation of court-appointed experts shall be paid by the parties in such proportions and at such times as the court directs. Any compensation charged to the Department of Justice will be paid from the appropriation "Fees and Expenses of Witnesses."

**C. Authorization and Payment Procedures.** When the expert is appointed by the court, the United States Attorney should submit to the Justice Management Division an OBD-47 accompanied by a copy of the court order appointing the expert witness under Fed.R.Evid. 706.

**D. Exclusion Under Fed.R.Evid. 706.** The appointment of expert witnesses for an indigent defendant in criminal cases or in civil habeas corpus cases is not provided under Fed.R.Evid. 706. In such instances, the Criminal Justice Act authorizes the court-appointed defense attorney to hire an expert witness on behalf of indigent defendant. The expenses of the expert will be paid by the Administrative Office of the U.S. Courts from funds appropriated for the implementation of the Criminal Justice Act. See DOJ Order 2110.24A (July 17, 1978).

### **3-8.300 Phasing Down United States Attorney Operations During a Lapse in Appropriations**

In the event there arises a situation in which an appropriation of funds may not be available for operation of the Department of Justice, the United States Attorneys' offices will proceed under the guidelines set forth below, in compliance with the Antideficiency Act, 31 U.S.C. Sec. 1341. The Antideficiency Act, as construed by the Attorney General, provides that, in the absence of appropriation, no obligation can be incurred except for the protection of life and property, the orderly suspension of operations or as otherwise authorized by law.

#### **3-8.311 Lapse in Appropriations -- Notification**

In the event of an impending lapse in appropriations, the Assistant Attorney General for Administration will notify all Department personnel of pending furloughs and phasing down operations. The EOUSA will then contact each United States Attorney with more specific information and instructions and will keep them aware of any more current information available from the JMD and the Office of Management and Budget and specific provisions of the Congress.

#### **3-8.312 Lapse in Appropriations -- Excepted/Non-Excepted Personnel**

Upon notification of a pending lapse in appropriations, the United States Attorney shall identify employees who are necessary to sustain legal operations as defined in USAM 3-8.321. At the instance of a lapse in appropriations, only those employees necessary to sustain the legal operations defined in USAM 3-8.321 shall be permitted to continue working. All other employees may only remain in duty status to the extent necessary to facilitate an orderly phasedown of non-emergency activities. The United States Attorneys shall identify the individual employees who are considered excepted and shall notify each employee of his/her status, in the event of a lapse in appropriations. The United States Attorney has authority to recall individual employees as the need arises and to substitute furloughed employees for non-furloughed employees if the furloughed employees are able to assume the case load designated as "emergency." The United States Attorney does not have the authority to recall employees because of the financial hardships they may be suffering.

### **3-8.313 Lapse in Appropriations -- Furloughs**

Any employees designated non-excepted will be furloughed upon a lapse in appropriations. During this time the employee will be in a non-pay, non-duty status. The employee will be notified by his/her supervisor or through some other communication channel when to return to work. Reduction-in-force procedures (5 C.F.R. Part 351) will be followed whenever an employee must be furloughed for more than 30 days.

### **3-8.314 Travel During a Lapse in Appropriations**

All travel directly relating to criminal and civil litigation will continue. All other travel, although previously authorized, will be cancelled, upon a lapse in appropriations. Any employee on travel when a funding lapse occurs should immediately contact his/her superior. If time is needed to seek a continuance or the employee is involved with a matter that poses a life or property constraint, see USAM 3-8.321, he/she will receive further instructions from his/her superior. In all other cases, the employee will be required to return home. Return travel and per diem/subsistence incurred in returning are authorized.

### **3-8.315 Payment of Fees and Expenses of Witnesses During a Period of Lapsed Appropriations**

Use of witnesses, and any obligations incurred as a result, are authorized in accordance with legal operations as defined in USAM 3-8.321. See also the EOUSA Resource Manual at 144, Payment and Fees and Witnesses During a Lapsed Appropriation.

### **3-8.321 Legal Operations -- Matters to be Continued During a Lapse in Appropriations**

All litigation and investigations which are essential to the protection of life and property are to continue.

**A. Criminal Matters.** These should continue without interruption as an activity essential to the safety of human life and the protection of property.

**B. Civil Matters.** Civil litigation will be curtailed or postponed, to the extent that the Courts will permit such an approach without harm to the interests of the United States. In the event that such an approach is not possible, civil litigation will continue without interruption as an activity essential to the protection of property.

### **3-8.400 Appraisers and Masters**

The Department of Justice pays for the compensation of special masters or appraisers the fees and expenses set by the court, but it reserves the right to refuse payment of unusual or unreasonable fees and/or expenses. United States Attorneys may authorize reasonable compensation.

United States Attorneys may authorize payment of reasonable compensation for special masters, guardians ad litem, or appraisers appointed by the court as the result of an action brought by the United States. Vouchers for compensation and expenses of such individuals must be supported by copies of the order making the appointment and fixing compensation and expenses. Justice Management Division Form OBD-47, "Request and Authorization for Fees and Expenses of Witnesses," will be used. The attorney should note on the form that it is being used for a special master. The division administrative officer will forward the OBD-47 to Financial Operations Services, and administrative officers for United States Attorneys' Offices, and to the U.S. Marshal's Office for that district.

Fees and expenses of land commissioners will not be paid by the Department. Land commissioners appointed pursuant to Rule 71A, Federal Rules of Civil Procedures are payable from funds appropriated to the judiciary.

### **3-8.420 Court Reporters**

As provided in 28 U.S.C. Sec. 753, each district court shall appoint one or more salaried court reporters who shall attend each session and record verbatim all proceedings in open court, and all other proceedings as specified by statute, rule, order of the court or as requested by any party to the proceedings. EOUSA interpretation of the statute requires that every word in criminal proceedings be recorded, including closing arguments. It is suggested that, in districts where it is not the practice to record proceedings in full, application should be made to the court to take corrective measures insuring compliance with the statute.

The salaried reporter is entitled to receive, in addition to salary, such fees for transcripts as may be prescribed from time to time by the court with the approval of the Judicial Conference. These fees are collectible from the parties, including the United States. The Department of Justice is financially responsible for any part of a transcript furnished to: the court; opponent counsel; to persons proceeding in forma pauperis; nor for the reporter's travel expenses except that, on approval of the court, the cost of the original and copies may be apportioned among the persons to whom they are furnished. If the government requires daily transcripts, any additional expenses involved in providing more rapid delivery must be borne by the reporter. The only exception to this is in rural areas, where the court reporter may need to hire reporters from outside the community area to help produce hourly, daily, or expedited transcripts. In such instances, the reporter may bill the ordering party for the subsistence costs of other reporters or auxiliary personnel. The costs are authorized up to the amount of travel subsistence that a government employee may be reimbursed for the same travel. An attendance fee for auxiliary personnel is not billable to the ordering party. Court Reporter Manual, Chapter XX at 10.

### **3-8.430 Employment of Independent Reporters**

Departmental appropriations are not available for payment of court reporters fees for recording court proceedings. If the salaried reporter is unable to report on court proceedings, the matter of obtaining additional reporters is a consideration for the court.

### **3-8.440 Employment of Additional Reporters in Lands Cases**

In view of the difficulty of obtaining the services of a salaried court reporter in Lands Commissioner cases, and because Department of Justice appropriations may not be used for additional reporters, the Director of the

Administrative Office of U.S. Courts has advised that, in special cases when the salaried court reporter is unavailable to report these hearings, it will authorize the appointment of a temporary court reporter for that purpose. In such cases, the United States Attorney should request that the judge secure authority for appointment from the Administrative Office for U.S. Courts.

### **3-8.450 Grand Jury Reporting**

Grand jury reporting may be performed by an employee of the United States Attorney's Office (Fed. R. Crim. P. Rule 6(d)) or by a commercial reporter engaged for the purpose. The salaried federal court reporter may report grand jury proceedings, but he/she may only be paid for transcripts produced, not for time worked; payment to a salaried federal court reporter for time worked would be considered a violation of the statutory prohibition against dual compensation. 5 U.S.C. Sec. 5533.

### **3-8.510 Transcripts**

It is the policy of the Executive Office for United States Attorneys that hourly, daily, or expedited transcripts should not be ordered unless absolutely necessary. All orders for hourly or daily transcripts must be expressly authorized in advance by the United States Attorney or First Assistant United States Attorney, and documentation of such authorization must accompany all payment vouchers for hourly or daily transcripts.

Ordinarily, only one transcript should be purchased in any case, except Court of Claims cases or depositions. Any decision by the United States Attorney to order more than one transcript must be based on absolute necessity for the availability of funds. Transcripts should only be purchased as required, for heads of the legal divisions of the Department of Justice and their assistants, United States Attorneys and their assistants, and other attorneys assisting in the case. Other government agencies interested in obtaining transcripts should make arrangements for purchase directly from their own appropriations. No Department of Justice funds are available for payment of transcript furnished to the court, either at its request or that of the government. The official copy in the files of the clerk of the court should be used by the court in these cases.

### **3-8.520 Expenses Incurred on Behalf of Indigents**

Following is a listing of expenses which may be incurred for persons proceeding in forma pauperis, and the responsibility for such expenses.

**A. Fact Witnesses.** Costs relating to subpoena and fees of indigent defendants witnesses are the responsibility of the Department of Justice and payable at the rates prescribed for witnesses pursuant to 28 U.S.C. Sec. 1821.

**B. Expert Witnesses.** Expert witnesses called by the defense and necessary to the adequate defense of an indigent person are paid from funds appropriated for the implementation of the Criminal Justice Act by the Administrative Office of the U.S. Courts. These expenses are authorized on Form CJA-21 after certification by counsel for the indigent defendant and approval by the presiding court or magistrate. Experts called by the court are paid by the Administrative Officer of the U.S. Court. The Department of Justice will pay for expert witness fees and expenses for expert witnesses appearing on behalf of the government. United States Attorneys have authority to employ an expert witness appearing on behalf of the government.

**C. Mental Examinations for Indigent Persons.** Expenses for examinations under 18 U.S.C. Sec. 4244 to determine a defendant's mental competency to stand trial are always the responsibility of the Department of Justice. Expenses for examinations to determine a defendant's mental responsibility at the time of the alleged offense are paid by the Administrative Office of the U.S. Courts except when the request is made by the United

States, in which case the Department of Justice is responsible. See Department of Justice Order 2110.24A (July 17, 1978).

**D. Depositions.** Expenses for travel and subsistence of a defendant and defendant's counsel for attendance at a deposition taken pursuant to Rule 15(c) Fed.R.Crim.P. are payable by the prosecuting agency. The purpose of such a deposition is to preserve evidence for the prosecution, and all costs should be assigned to the prosecuting agency regardless of the availability of funds appropriated for the Criminal Justice Act. (Decision of Administration Counsel, Department of Justice, November 26, 1975.) The United States Attorney may authorize such expenses in a similar fashion as other litigation expenses.

Fees and expenses for depositions of fact witnesses, including the cost of recording and transcribing the proceeding, for indigent persons shall be paid by the Department of Justice in the same manner as expenses and fees for fact witnesses testifying in court. See above. Fees and expenses for depositions of expert witnesses of the indigent defendant are paid by the Administrative Office of the U.S. Courts. 39 COMP.GEN. 133.

A chart indicating the controlling rule or law which affects the financial responsibility for the payment of certain expenses of litigation in indigent proceedings and sets forth the appropriations chargeable for expenses, may be found in Department of Justice Order 2110.24A (July 17, 1978).

### **3-8.540 Notary Expenses of Employees**

Officers and employees of the Department of Justice who are required to serve as notaries public in connection with the performance of public business may be allowed their expenses under the following conditions:

- A. Performance of notarial duties must have been ordered as part of the duties of the employee.
- B. If the individual first qualified as a notary for a personal purpose, and subsequently was required to serve officially, such percentage of his/her expenses shall be paid as the official use of his/her authority bears to the use of the notarial powers, the individual certification being acceptable as to percentage.
- C. The expense of obtaining commissions includes bond premiums, official seal, etc.
- D. Payments subsequent to initial qualifications are limited to actual expenses of maintaining notarial authority.
- E. Funds available for personal services or general administrative expenses for the fiscal year in which the expense was incurred shall be used.
- F. Receipts are only required for amounts in excess of \$15.

Procedures for reimbursement of qualification expenses are established in Department of Justice Order 2110.7A (July 15, 1975). Payments are made by use of SF-1164, Claim for Reimbursement for Expenditures on Official Business.

### **3-8.550 Expenses Requiring Prior Authorization**

Litigative expenses are defined in OBD Order 2100.1A (April 6, 1976), as "those which result directly from actions of the courts or have a direct connection with the prosecution of a case." They include court reporting, filing, fees, interpreters, consultants, advertising legal notices, transportation of evidence, special masters, and advisory reports from experts who will not serve as witnesses (e.g., appraisals). United States Attorneys may incur litigative expenses without specific authorization from the Executive Office for United States Attorneys.

Administrative expenses which the United States Attorneys may approve include the purchase of supplies (as approved under established procurement instruments), employee travel, overtime, and changes to telephone service (except complete system overhaul).

### **3-8.560 Out-of-Pocket Litigative Expenses**

In 38 COMP.GEN. 343, the Comptroller General ruled that when Congress has specifically authorized a particular government agency or corporation to undertake litigation in the pursuance of its duties and responsibilities, i.e., the agency can "sue or be sued", the out-of-pocket expenses incurred in prosecuting or defending such actions will be properly chargeable to the appropriations of that agency or corporation, even though the Department of Justice may prosecute or defend any litigation in which the agency or corporation becomes involved.

Further, those government agencies that lack Congressional authorization to institute suit or defend against legal actions (e.g., Farmers Home Administration) are also prohibited by the Comptroller General from using their appropriation to pay for litigative services. These agencies must rely upon the Department of Justice to act in their behalf and, as a result, all out-of-pocket expenses relating to the litigation are properly chargeable to the United States Attorneys' appropriation as litigative expenses.

Out-of-pocket expenses are generally defined as those expenses incurred for Services provided by a private vendor (i.e., persons or firms outside the federal government) which are directly related to conducting the litigation at hand.

### **3-8.570 Expenses Incurred in a Foreclosure Proceeding Brought on Behalf of a Government Agency or Corporation**

In assisting in foreclosure proceedings, the U.S. Marshals Service incurs various out-of-pocket expenses associated with the proceedings. Out-of-pocket expenses are defined as those costs incurred for advertising, property appraisals, abstract supplementation and any other services provided by private vendors which are directly related to conducting the foreclosure proceedings. Intrinsic expenses such as U.S. Marshals' fees, commissions, mileage, per diem, salaries, etc., are assumed by the U.S. Marshals Service to be constructive earnings and are not expenses that are chargeable to the United States Attorneys' appropriation.

The U.S. Marshals Service will be reimbursed for the out-of-pocket expenses incurred in foreclosure proceedings in either one of two ways. First, when a third (i.e. non-government) party is the successful bidder for the mortgaged property at the foreclosure sale, the bid is paid into the court and a fund is created. The U.S. Marshals Service is reimbursed from this fund for all appropriate expenses incurred before the fund is then disbursed to the first lien creditor, then to other creditors in order of priority or to the court for distribution as the court may direct. The United States Attorneys' appropriation may not be billed by the U.S. Marshals for out-of-pocket expenses incurred in a third-party sale. If the United States Attorney's office in the district in which the litigation occurred had inadvertently been billed and paid for any of the out-of-pocket expenses associated with the litigation, the United States Attorney should seek reimbursement for payments from the U.S. Marshals Service.

Secondly, in those cases where the government, through the Farmers Home Administration, is the successful bidder at the foreclosure sale, no fund is created. Instead, all out-of-pocket expenses incurred will be properly chargeable to the United States Attorneys' appropriation. The U.S. Marshals Service should submit an itemized voucher for appropriate out-of-pocket expenses incurred in a foreclosure proceeding to the United States Attorney in the district responsible for handling the litigation. The United States Attorney must sign the voucher and certify that the charges billed are appropriate for payment.

### **3-8.600 Advance Payments of Bills**

In accordance with 31 U.S.C. Sec. 3324, prohibiting advance payments of public monies, no disposition of funds should be made for services rendered, purchases made, etc., until the transaction has been accomplished. An exception to this rule is permitted if advance payment is authorized by "other law." This provision has been interpreted to include state law. Therefore, if state law requires the advance payment of filing fees, for instance, such payments may be issued upon appropriate showing of the requirement of law. A voucher prepared for issuance of an advance payment should specifically identify the statute requiring payment in advance.

### **3-8.620 Appropriations Chargeable**

The appropriation "Salaries and Expenses, United States Attorneys, Department of Justice," is chargeable with the expense of operating the United States Attorneys' offices.

The date on which fees are earned, services rendered, or expenses incurred, and not the date of certification of payment, determine the fiscal year from which payment shall be made, except that bills for metered commodities or services such as electricity, telephone, etc., shall be paid from the appropriation current at the end of the billing period.

### **3-8.622 Chargeable to "Fees and Expenses of Witness" Appropriation**

Expenses chargeable to the appropriation "Fees and Expenses of Witness" are as follows:

- A. Fees for attendance, per diem and traveling expenses for attendance of witnesses, both expert and fact, for witnesses testifying for United States in proceedings in U.S. Courts or U.S. Magistrates' hearings. See USAM 3-19.100, and the EOUSA Resource Manual at 135 and 147.
- B. Traveling expenses of government employees attending court when properly payable. See USAM 3-19.400.
- C. Physical examinations of plaintiffs, witnesses, or defendants in contemplation of testimony in court.
- D. Expenses of examining prisoners to determine sanity as provided in 18 U.S.C. Sec. 4244-8, including competency to stand trial exams, and employment of psychiatrists, hospital expenses incident thereto, and testimony.
- E. Expenses of Interpreters for Government Witnesses (trial expenses).

### **3-8.623 Chargeable to Legal Divisions of the Department of Justice**

Expenses chargeable to the Legal Divisions include:

- A. Litigation expenses in cases for which a division has assumed direct responsibility; and
- B. Foreign counsel in extradition cases.

### **3-8.624 Chargeable to United States Courts**

- A. Lands Commissioners;
- B. Interpreters, except for government witnesses; and
- C. Expenses authorized on behalf of indigent defendants.

### **3-8.625 Chargeable to Other Agencies**

Costs to translate and transcribe recordings obtained under authority of Title III.

### **3-8.630 Certifying Officers**

Vouchers involving expenses of the United States Attorneys' Offices must be certified by an authorized certifying officer of that office before submission for payment. 31 U.S.C. Sec. 82b.

Certifying officers are held responsible for the existence and correctness of the facts stated on vouchers and their supporting papers, the legality of the proposed payment, and the correctness of computations. 31 U.S.C. Sec. 82c, f.

There should be a minimum of two certifying officers in each United States Attorney's office. Revocation of an existing or nomination of a new certifying officer requires approval of the Deputy Director, Financial Management Staff, EOUSA. The Deputy Director, Financial Management Staff should be notified of any changes to certifying officers and completed forms should be on record. SF-210 should be executed by each United States Attorney and by any person nominated to be a certifying officer. This form should be sent to the Executive Office for approval. Upon receipt of authority from the Executive Office, the nominee may begin to certify.

### **3-8.640 District Budgets (Allowances) and Operating Plans**

All United States Attorneys' districts are issued either resource allowance categories (9 categories in district/OCDE) or financial operating plans. These allowances/operating plans are issued to the United States Attorney in the district and it is his/her responsibility to manage the district operation within the approved resource levels. Each fiscal year, Financial Operation Guidelines will be issued that detail the requirements and policy pertaining to the Financial Allowances and Operating Plans of the Offices of the United States Attorneys including any limitations on funds transfer or use.

A Report of Obligations Incurred is due to the Executive Office on the seventh day of January, April, July and October of each year. The report provides information on resource consumption by allowance category or object class code and requires the United States Attorney to present a narrative justification for unusual spending trends.

### **3-8.700 Travel Authority**

Travel is governed by standardized government travel regulations as supplemented by the Department, see Order DOJ 2200.11(d) (January 31, 1994).

United States Attorneys may authorize their own travel (except foreign and first class) as well as that of their subordinates anywhere within the United States by common carrier; personal vehicle (auto or airplane); or car rental, either commercial or through General Service Administration. They may also authorize per diem and actual subsistence to designated and non-designated high-rate areas, non-governmental travel after approval by the Legal Counsel and other official miscellaneous expenses such as official telephone calls and taxis. Special Assistants who perform the work of regular Assistants are authorized to travel in the same fashion as Assistant United States Attorneys. United States Attorneys are delegated authority to authorize, in cases of emergency, the use of cash in excess of \$100 for commercial transportation. This authority may not be redelegated by the United States Attorney.

The power to authorize travel is reserved to the United States Attorney or an Assistant United States Attorney designated as Acting United States Attorney in accordance with 28 C.F.R. Sec. 0.131. The United States Attorney may not redelegate this authority to another official below his/her position. Only the Director, EOUSA may redelegate authority to authorize travel to another official and only in accordance with the criteria established in DOJ Order 2200.11(d), Section 301-1.4(g).

### **3-8.720 Payment for Travel Expenses**

Reimbursement for employees are paid by the district through the Accounts Payable Travel Module System (A/P TRAV). All travel expenses must be authorized by the United States Attorney or delegated official and approved by an official designated by the United States Attorney. The designated official is responsible for certifying to the correctness of the voucher and the propriety of payments.

Advance of travel funds may be obtained from the districts administrative office through the issuance of a "draft" from the A/P TRAV System. Government non-card holders should complete the Standard Form 1038, application for Advance of Funds Application and Account when making a request. Government contract-issued charge card holders may be authorized a minimal travel advance through the use of ATMs that accept the government charge card.

Advances should not be given to non-Department of Justice personnel. Exceptions may be made for state and local officials in cases where there is no money in the state or local budgets to pay or the travel.

### **3-8.730 Foreign Travel**

The Executive Office requires at least two weeks advance notification of proposed foreign travel. Definite dates of travel do not need to be provided for purposes of this notification; however, the approximate period of time in travel status must be indicated so that an estimate of per diem expenses can be computed. Two weeks advance notification is required so that necessary coordination can be accomplished with the Department and with the Department of State.

In order to insure that the international ramifications of proposed foreign travel are fully considered, each travel proposal must receive the consent of the Criminal Division. The Executive Office also requires the consent of that section of the organization having general supervisory responsibility over the type of case to which the travel pertains. If preliminary contact has been made with either organization, this request should indicate the name(s) of individuals who are familiar with the proposed travel.

All official foreign travel by employees occupying Executive Schedule and Senior Executive Service positions must be authorized by the Deputy Attorney General. See DOJ Order 2200.11(d), Section 301-1.4(c).

### **3-8.740 First Class Transportation**

First class transportation may only be authorized by the Deputy Director, Financial Management Staff, EOUSA, in accordance with the criteria established in Federal Travel Regulations, Section 301-3.3. All requests for first class transportation must be submitted in advance to the Executive Office. United States Attorneys should complete a First Class Authorization Request for review and approval. First class travel should only be requested for the reasons allowed under Federal Travel Regulations, Section 301-3.3, or when it can be shown that first class accommodations will result in overall savings to the government based on economic considerations such as additional subsistence costs that would be incurred while awaiting availability of less-than-first-class accommodations. In most instances, United States Attorneys should only request first class travel after all other efforts have been made to obtain regular coach fare for the intended trip.

### **3-8.800 Relocation**

The eligibility of new or transferring employees to relocation expenses is found in Federal Travel Regulations, Section 302-1. Authority to authorize such expenses rests with the Deputy Director, Financial Management Staff, EOUSA. Decisions will be made upon written justification submitted over the United States Attorney's signature. Oral commitment will not be given in advance by the Deputy Director.

Under relevant rulings of the General Accounting Office, relocation expenses are only to be paid if a relocation is certifiably in the best interests of the government. Previously, articulated policy has limited this standard to the following circumstances:

1. A managerially directed relocation, or
2. A relocation effected for the health and/or safety of an employee, or
3. A relocation necessitated by the inability to staff a position with a qualified applicant from within the local commuting area.

Payments of relocation costs will not be considered when the employee has requested the transfer for his/her own benefit.

Payments of relocation costs also will not be considered unless the United States Attorney shows evidence that every effort was made to find applicants from the local area.

The cost of relocation expenses which are approved by the Director will be assessed against individual districts, through a combination of reduced financial allowances and workforce levels.

### **3-8.900 Law Enforcement Coordinating Committee (LECC) Expenses**

Expenses of LECC operations should be applied to the appropriate allowance category (i.e., travel, supplies, equipment, etc.).

When a district is planning to hold an LECC training program on asset forfeiture and equitable sharing, the expenses may be reimbursable from the Asset Forfeiture Fund. Requests to hold asset forfeiture training funded from the Asset Forfeiture Fund requires approval of the LECC/VW Staff, EOUSA. In order to have district funds replenished, it is necessary to report the costs to EOUSA on the quarterly report on asset forfeiture. When multi-district LECC and/or Victim Witness Coordinator meetings are held, the costs of the meeting can be shared by all of the participating districts.

### **3-8.990 District Office Conference Guidelines**

District office conferences shall be conducted and reasonably funded in a consistent fashion nationwide. Agenda subjects shall directly relate to the mission of United States Attorneys' offices, and attendance limited to district employees and individuals of specific expertise to the agenda subjects. A copy of the agenda should be forwarded to the Director, EOUSA at least 30 days prior to conference commencement. Office conferences should not be scheduled for the first quarter of a fiscal year and, to the maximum extent possible, should be held in the second half of the fiscal year. Conferences should be limited to one and a half days in length with lodging, if required, provided for the evening of the first day.

Attendance at conferences should be closely scrutinized. When considering invitations to individuals from outside the district, care should be taken to include only those who have a specific expertise and are to participate directly in the agenda.

A conference site should be selected which minimizes common carrier transportation expense, and results in lowest overall cost to the government if such expenses are being reimbursed to employees. For districts with branch offices, this would generally require holding the conference in close proximity to the largest office.

Office conferences should be funded through savings from other allowance/financial areas. Authorization for working meals requires approval by the Deputy Director, Financial Management Staff, EOUSA.